



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

---

*86 Chambers Street  
New York, New York 10007*

March 24, 2022

By ECF

Honorable J. Paul Oetken  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Our Children's Earth Foundation v. Regan*,<sup>1</sup> No. 20 Civ. 8232 (JPO)

Dear Judge Oetken:

This Office represents the defendant, EPA Administrator Michael S. Regan in his official capacity, in this action. I write to provide an update on EPA's compliance with the provisions of the consent decree entered on January 19, 2022, ECF No. 31.

Paragraph 3 of the consent decree provides two sets of deadlines that may govern one of EPA's actions in this matter. Specifically, paragraph 3.b provides that, notwithstanding the deadlines set by paragraph 3.a,

[I]f by February 28, 2022, EPA signs for publication in the Federal Register (i) a proposal of full or partial disapproval of the transport provisions of the Proposed 2015 Ozone Infrastructure SIP submission and (ii) a proposed federal implementation plan to cover those transport provisions for which EPA proposed a full or partial disapproval for New York pursuant to section 110(c) of the CAA, 42 U.S.C. § 7410(c), then EPA shall have until December 15, 2022, to sign a final action to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part, the interstate transport provisions of the Proposed 2015 Ozone Infrastructure SIP submission pursuant to sections 110(k)(2)-(4) of the CAA, 42 U.S.C. §§ 7410(k)(2)-(4).

ECF No. 31 ¶ 3.b. We now confirm that the government has taken the actions necessary under paragraph 3.b to qualify for the December 15, 2022 deadline.

Specifically, by February 28, 2022, EPA signed a proposed disapproval for the transport provision of state implementation plan submittal for the 2015 ozone National

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Administrator Michael S. Regan, in his official capacity, is automatically substituted as a defendant.

Ambient Air Quality Standards from the State of New York. 87 Fed. Reg. 9484 (Feb. 22, 2022).

And on February 28, 2022, EPA signed “Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard” available at [https://www.epa.gov/system/files/documents/2022-03/nprm\\_transport-fip\\_2060-av5\\_prepublication.pdf](https://www.epa.gov/system/files/documents/2022-03/nprm_transport-fip_2060-av5_prepublication.pdf) (not yet published in the *Federal Register*). The proposed rule contains a proposed federal implementation plans for New York.

We thank the Court for its attention to this matter.

Respectfully,

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York

By: /s/ Peter Aronoff  
PETER ARONOFF  
Assistant United States Attorney  
Telephone: (212) 637-2697  
Facsimile: (212) 637-2717  
E-mail: [peter.aronoff@usdoj.gov](mailto:peter.aronoff@usdoj.gov)

*Counsel for Defendant*

cc: All counsel of record (by ECF)